

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiffs,

V.

ALFRED D. ROGERS,

Defendant.

8:00CR358

ORDER

This matter is before the court on defendant's motion to dismiss indictment (Filing No. 150). In his motion, defendant asks this court to dismiss his indictment alleging that the government violated his due process rights by not returning the indictment into open court.

On June 5, 2001, defendant entered a plea of guilty to Counts I and IV of a superseding indictment charging violations of 21 U.S.C. § 846 (drug conspiracy) and 18 U.S.C. § 924(c) (possession of a firearm during a drug trafficking crime). (Filing No. 66). On December 21, 2001, a Judgment and Commitment order was entered sentencing defendant to 121 months of imprisonment on Count I and 60 months on Count IV, to be served consecutively. (Filing No. 110). On November 18, 2003, the court entered Judgment denying defendant's § 2255 motion, and the Eighth Circuit affirmed this decision denying defendant's request for a certificate of appealability on July 19, 2004. (Filing Nos. 132 & 147).

Fed. R. Crim P. 12(b)(3) states that “the following must be raised before trial: (B) a motion alleging a defect in the indictment or information – but at any time while the case is pending, the court may hear a claim that the indictment or information fails to invoke the

court's jurisdiction or to state an offense." Defendant is only now, almost two years after the conclusion of his case, moving the court to dismiss his indictment. At no time during these proceedings did defendant make any effort to preserve his current objection to the indictment. Therefore, pursuant to Fed. R. Crim. P. 12(b)(3) (B), defendant's motion is untimely.

IT IS ORDERED:

1. The defendant's motion to dismiss his indictment (Filing No. 150) is denied.
2. The Clerk is directed to mail a copy of this Order to the defendant at his last known address.

DATED this 23rd day of May, 2006.

BY THE COURT:

s/Joseph F. Bataillon
JOSEPH F. BATAILLON
United States District Judge